

NOCV2005-00732
Fernezan v Plymouth Rubber Company

File Date	04/25/2005	Status	Disposed: transfered to other court (dtrans)	
Status Date	05/24/2005	Session	A - Civil A-CtRm 10	
Origin	1	Case Type	E11 - Workman's compensation	
Lead Case		Track	X	

Service	07/24/2005	Answer	09/22/2005	Rule12/19/20
Rule 15		Discovery		Rule 56
Final PTC	10/22/2005	Disposition	11/21/2005	Jury Trial Yes

PARTIES

Plaintiff Ernst Fernezan Active 04/25/2005	Private Counsel 642406 David M Green Alford & Bertrand 60 Arsenal Street PO Box 322 Watertown, MA 02471-0322 Phone: 617-926-8800 Fax: 617-924-7780 Active 04/25/2005 Notify
Defendant Plymouth Rubber Company Served: 05/04/2005 Served (answr pending) 05/20/2005	Private Counsel 366730 Debra Dyleski-Najjar Hinckley Allen & Snyder 28 State Street Boston, MA 02109 Phone: 617-345-9000 Fax: 617-345-9020 Active 05/24/2005 Notify

ENTRIES

Date	Paper	Text
04/25/2005	1.0	Complaint & jury claim filed \$280.00 entry fee paid
04/25/2005		Origin 1, Type E11, Track X.
04/25/2005	2.0	Civil action cover sheet filed
04/25/2005		X track notice sent to plffs attorney
04/28/2005		ONE TRIAL review by Clerk, Case is to remain in the Superior Court
05/20/2005	3.0	SERVICE RETURNED: in hand to Don Andriczyk, legal department, person in charge at the time of service for Plymouth Rubber Company(Defendant) 5/4/05
05/24/2005	4.0	Case REMOVED this date to US District Court of Massachusetts (rec'd 5/23/05)

EVENTS

5/24/05
Attest: *[Signature]*
Deputy Assistant Clerk
A TRUE COPY

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
DOCKET NO: REQUESTED

ERNST FERNEZAN
PLAINTIFF

*

*

*

VS.

*

*

PLYMOUTH RUBBER COMPANY*
DEFENDANT

*

05 00732

RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY

Introduction

The Plaintiff, Ernst Fernezan, brings this action against the Defendant, Plymouth Rubber Company, pursuant to Mass.Gen.L. Ch. 152, §75B(2) which prohibits an employer from discharging, refusing to hire, or in any other manner discriminating against an employee because the employee has exercised his rights under the Massachusetts Worker's Compensation Act.

Parties

1. The Plaintiff is an adult resident of the state of Rhode Island, residing at 35 Thackray Street, Providence, Rhode Island.
2. The Defendant, Plymouth Rubber Company is a duly organized corporation with substantial business contacts in the Commonwealth of Massachusetts, doing substantial business in the Commonwealth of Massachusetts and with a principal place of business at 104 Revere Street, Canton, Massachusetts.

Facts

3. On or about July 22, 2002 Plaintiff was involved in a work-related accident that occurred on Defendant's premises.
4. Plaintiff has not returned to work since the date of the accident.
5. As a result of the industrial accident, Plaintiff filed a workers' compensation claim.
6. Defendant was aware of the workers' compensation claim and participated in the process at the Department of Industrial Accidents.
7. On or about March 28, 2005, Defendant purportedly sent Plaintiff a letter, stating that he was terminated on March 28, 2005.

8. Plaintiff's case was scheduled for a lump sum settlement on March 29, 2005, which Defendant was aware of and participated in.
9. The lump sum was approved on March 29, 2005 at the Department of Industrial Accidents.

**COUNT 1 - DEFENDANT LIBERTY PROPERTIES -
VIOLATION OF MASS.GEN.L. CH. 152, §75b(2)**

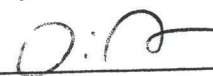
(The Plaintiff reasserts the allegations set forth in paragraphs 1 - 9 above and incorporates the same herein by reference.)

10. The Defendant discharged the Plaintiff in violation of Mass.Gen.L. Ch. 152, §75B(2) for exercising his rights under and pursuant to the Massachusetts Worker's Compensation Act.
11. The Defendant discriminated against the Plaintiff in violation of Mass.Gen.L. Ch. 152, §75 (2) for exercising his rights under and pursuant to the Massachusetts Worker's Compensation Act.
12. As a direct and proximate result of the illegal actions of the Defendant as herein above set forth, the Plaintiff has been caused to suffer financial loss, lost wages and benefits, mental anguish and pain and suffering.

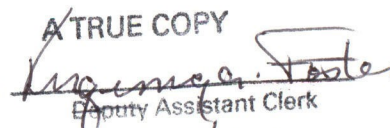
WHEREFORE, the Plaintiff demands that judgment be entered for his damages with lost wages and benefits and pain and suffering against the Defendant, together with interest, costs, and attorney's fees with actual and compensatory damages. The Plaintiff also demands the Court enter an Order compelling the Defendant to grant the Plaintiff suitable employment, and such other relief as the Court deems just.

Plaintiff demands a jury trial on all counts.

By Plaintiff's Attorney,



DAVID GREEN, ESQUIRE
ALFORD & BERTRAND, LLC
60 Arsenal Street
Post Office Box 322
Watertown, MA 02471-0322
(617) 926-8800

A TRUE COPY
Attest: 
Deputy Assistant Clerk
5/24/05

CIVIL ACTION COVER SHEET

Case 1:05-cv-11057-NMG Document 4

Filed 05/27/2005 Page 4 of 15

Trial Court of Massachusetts
Superior Court Department
County: Norfolk



20

PLAINTIFF(S) Ernst Fernezan	DEFENDANT(S) Plymouth Rubber Company
TORNEY, FIRM NAME, ADDRESS AND TELEPHONE David Green Ford & Bertrand, 60 Arsenal Street tertown, MA 02471 (617) 926-8800	ATTORNEY (if known)
Card of Bar Overseers number: 642406	

Origin code and track designation

- Place an x in one box only:
- | | |
|---|---|
| <input type="checkbox"/> 1. F01 Original Complaint | <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) |
| <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) |
| <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) | <input type="checkbox"/> 6. E10 Summary Process Appeal (X) |

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
Ell	Workers Comp.	(X)	(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

Documented medical expenses to date:

- | | |
|------------------------------------|-----------|
| 1. Total hospital expenses | \$ |
| 2. Total Doctor expenses | \$ |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |
| Subtotal | \$ |

- | | |
|--|--------------|
| Documented lost wages and compensation to date | \$47,960.50 |
| Documented property damages to date | \$ |
| Reasonably anticipated future medical and hospital expenses | \$ |
| Reasonably anticipated lost wages | \$43,907.76 |
| Other documented items of damages (describe) pain and suffering, emotional damages | \$ 28,131.74 |

- i. Brief description of plaintiff's injury, including nature and extent of injury (describe)
- Plaintiff was terminated by Defendnat while he was receiving workers' compensation benefits
- \$
- TOTAL \$120,000.00**

CONTRACT CLAIMS

(Attach additional sheets as necessary)

- Provide a detailed description of claim(s):
- TOTAL \$**

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record David Green A TRUE COPY DATE: 4-13-05

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

NO. 05 00732
RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY
5/20/05

ERNST FERNEZAN
....., Plaintiff(s)

PLYMOUTH RUBBER COMPANY
....., Defendant(s)



SUMMONS

To the above-named Defendant: Plymouth Rubber Company

You are hereby summoned and required to serve upon David Green, Esquire, plaintiff's attorney, whose address is P.O. Box 322, Watertown, MA 02471-0322, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Dedham either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

BARBARA J. ROUSE, Esquire

WITNESS, SUZANNE V. DELVECCHIO, Esquire, at Dedham the 28th

day of April, in the year of our Lord two thousand and Five

Tracy A. Dimity Clerk.

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

Attest:

A TRUE COPY

Deputy Assistant Clerk

5/24/05



May 5, 2005

I hereby certify and return that on 5/4/2005 at 1:02PM I served a true and attested copy of the summons, complaint, tracking order and civil action cover sheet in this action in the following manner: To wit, by delivering in hand to Don Andriczyk, legal dept., , person in charge at the time of service for Plymouth Rubber Company, at 104 Revere Street, Canton, MA 02021. Basic Service Fee (\$30.00), Copies-Attestation (\$5.00), Conveyance (\$4.50), Postage and Handling (\$1.00), Travel (\$4.48) Total Charges \$44.98

Deputy Sheriff Frederick J. Laracy

Frederick J. Laracy
Deputy Sheriff

N. B. TO PROCESS SERVER:-

**PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN
THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON
DEFENDANT.**

, 20

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

NO.

....., *Plaintiff*

v.

....., *Defendant*

SUMMONS

(Mass. R. Civ. P.4)

NOTICE TO DEFENDANT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK OF THE COURTS
NORFOLK COUNTY
JUL 20 A.D. 2005
5/24/05

Ernst Fernezan,
Plaintiff

v.

Plymouth Rubber Company, Inc.
Defendant

05 11057 NMG

NOTICE OF REMOVAL OF
CIVIL ACTION PURSUANT
TO 28 U.S.C. § 1442(a)(1) that the
foregoing document is true and correct copy of the

☐ electronic docket in the captioned case

CIVIL ACTION NO. 05-11057 NMG
☐ electronically filed original filed on

☒ original filed in my office on 5/20/2005

Sarah A. Thornton
Clerk U.S. District Court
District of Massachusetts

By: _____
Deputy Clerk

NOTICE OF REMOVAL

Defendant Plymouth Rubber Company, Inc. respectfully states
the following in support of this Notice of Removal based on this
Court's diversity jurisdiction:

1. On or about April 13, 2005, Plaintiff Ernst Fernezan initiated an action against the Defendant Plymouth Rubber Company, Inc. in the Superior Court of the State of Massachusetts, Norfolk County ("the State Court Action").
2. On May 4, 2005, Fernezan served Plymouth Rubber Company with a copy of the Summons and Complaint. A true and correct copy of the Summons and Complaint, served upon Plymouth Rubber Company are attached hereto as Exhibit A.
3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a) and 1441(e) and Plaintiff alleges the amount in controversy as \$120,000.

4. Plaintiff is a resident of the State of Rhode Island.
(Complaint Para. 1).

5. Defendant is a Massachusetts Corporation with a place
of business in Canton, Massachusetts. (Complaint Para. 2).

6. Pursuant to 28 U.S.C. § 1446(a), all process,
pleadings and orders that have been served upon Defendant to
date in this matter are included with this Notice of Removal as
Exhibit A.

7. Pursuant to 28 U.S.C. § 1446(d), a true and complete
copy of this Notice of Removal will be submitted for filing with
the Clerk of the State Superior Court, Norfolk County.

8. This Notice of Removal is being filed within 30 days,
as defined by 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a),
after Defendants first received a copy of the Summons and
Complaint as well as notice of the claims made herein.

9. Written notice of the filing of this Notice of Removal
has been given to all parties who have appeared in this action.

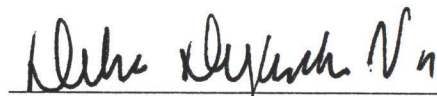
10. The required filing fee of \$250.00 and an executed
Civil Cover Sheet accompany this Notice.

11. Pursuant to Local Rule 81.1., Defendant Plymouth
Rubber shall request from the Clerk of the Norfolk Superior
Court certified or attested copies of all records and
proceedings in the state court and certified or attested copies
of all docket entries in the state court, and shall file the

same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, the Defendant Plymouth Rubber prays that the action now pending in the Norfolk County Superior Court be removed therefrom to this Court.

Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorneys,



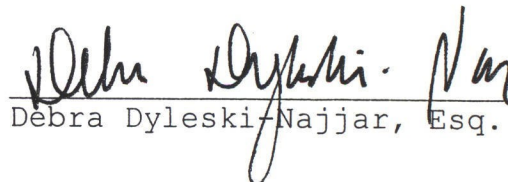
Debra Dyleski-Najjar, BBO No.: 366730
The Wagner Law Group, PC
One Financial Center
Boston, MA 02111

Dated: May 20, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, hereby certify that on this 20th day of May 2005, I caused a true and accurate copy of the foregoing Notice of Removal and of the accompanying Notice to Plaintiff to be served by first class U.S. Mail, postage prepaid, upon the following:

David Green, Esq.
Alford & Bertrand, LLC
60 Arsenal Street
P.O. Box 322
Watertown, MA 02471-0322


Debra Dyleski-Najjar, Esq.

A TRUE COPY

Attest: 
Deputy Assistant Clerk

5/24/05

COMMONWEALTH OF MASSACHUSETTS

COPY

NORFOLK, ss.

LS

SUPERIOR COURT
CIVIL ACTION

NO. 05 00732

ERNST FERNEZAN

Plaintiff(s)

v.

PLYMOUTH RUBBER COMPANY

Defendant(s)

SUMMONS

To the above-named Defendant: Plymouth Rubber Company

You are hereby summoned and required to serve upon David Green, Esquire, plaintiff's attorney, whose address is P.O. Box 322, Watertown, MA 02471-0322, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Dedham either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

BARBARA J. ROUSE, Esquire

WITNESS, SUZANNE V. DELVECCHIO, Esquire, at Dedham the 28th

day of April, in the year of our Lord two thousand and Five

A TRUE COPY, ATTEST:

DEPUTY SHERIFF

DATE 5/4/05

Tristen A. Demilly Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

Case 1:05-cv-11057-NMG Document 4 Filed 05/27/2005 Page 11 of 15

I hereby certify and return that on, 20, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

.....

.....

.....

Dated:, 20

N. B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

, 20

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

NO.

....., Plaintiff

v.

....., Defendant

SUMMONS

(Mass. R. Civ. P. 4)

01/26/03 3:50PM LARSEN

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
DOCKET NO: REQUESTED

ERNST FERNEZAN
PLAINTIFF

VS.

PLYMOUTH RUBBER COMPANY*
DEFENDANT

Introduction

The Plaintiff, Ernst Fernezan, brings this action against the Defendant, Plymouth Rubber Company, pursuant to Mass.Gen.L. Ch. 152, §75B(2) which prohibits an employer from discharging, refusing to hire, or in any other manner discriminating against an employee because the employee has exercised his rights under the Massachusetts Worker's Compensation Act.

Parties

1. The Plaintiff is an adult resident of the state of Rhode Island, residing at 35 Thackray Street, Providence, Rhode Island.
2. The Defendant, Plymouth Rubber Company is a duly organized corporation with substantial business contacts in the Commonwealth of Massachusetts, doing substantial business in the Commonwealth of Massachusetts and with a principal place of business at 104 Revere Street, Canton, Massachusetts.

Facts

3. On or about July 22, 2002 Plaintiff was involved in a work-related accident that occurred on Defendant's premises.
4. Plaintiff has not returned to work since the date of the accident.
5. As a result of the industrial accident, Plaintiff filed a workers' compensation claim.
6. Defendant was aware of the workers' compensation claim and participated in the process at the Department of Industrial Accidents.
7. On or about March 28, 2005, Defendant purportedly sent Plaintiff a letter, stating that he was terminated on March 28, 2005.



PLAINTIFF(S)

DEFENDANT(S)

Ernst Fernezan

Plymouth Rubber Company

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE David Green
 Ford & Bertrand, 60 Arsenal Street
 Woburn, MA 02471 (617) 926-8800

ATTORNEY (if known)

Board of Bar Overseers number: 642406

Origin code and track designation

Place an x in one box only:

- ☐ 1. F01 Original Complaint
☐ 2. F02 Removal to Sup.Ct. C.231,s.104
 (Before trial) (F)

- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

E11 Workers Comp. (X) (X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

Documented medical expenses to date:

1. Total hospital expenses \$
 2. Total Doctor expenses \$
 3. Total chiropractic expenses \$
 4. Total physical therapy expenses \$
 5. Total other expenses (describe) \$

Subtotal \$

Documented lost wages and compensation to date \$47,960.50

Documented property damages to date \$

Reasonably anticipated future medical and hospital expenses \$

Reasonably anticipated lost wages \$43,907.76

Other documented items of damages (describe) pain and suffering, emotional damages
 \$ 28,131.74

Brief description of plaintiff's injury, including nature and extent of injury (describe)

Plaintiff was terminated by Defendant while he was receiving workers' compensation benefits

\$

TOTAL \$120,000.00

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

EASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE: 4-13-05

CIVIL DOCKET# NOCV2005-00732-A

RE: Fernezan v Plymouth Rubber Company

TO: David M Green, Esquire
Alford & Bertrand
60 Arsenal Street
PO Box 322
Watertown, MA 02471-0322

TRACKING ORDER - X TRACK

You are hereby notified that this case is on the **accelerated (X) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	07/24/2005
Response to the complaint filed (also see MRCP 12)	09/22/2005
Firm trial date set	10/22/2005
Case disposed	11/21/2005

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session **A** sitting in **CtRm 10** at **Norfolk Superior Court**.

Dated: 04/25/2005

Walter F. Timilty
Clerk of the Courts
BY:
Assistant Clerk

Location: CtRm 10
Telephone: (781) 326-1600

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Superior Court

Ernst Fernandez,
Plaintiff

vs.

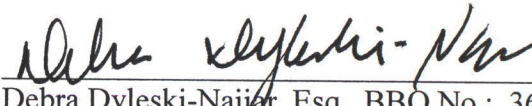
Plymouth Rubber Company,
Defendant

Docket No.: NOCV2005-00732-A

NOTICE OF FILING

PLEASE TAKE NOTICE that, on this date, Defendant Plymouth Rubber Company, Inc. filed with the United States District Court for the District of Massachusetts, its Notice of Removal, a copy of which is attached to this Notice of Filing, effecting the removal of this action to federal court.


Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorneys,


Debra Dyleski-Najjar, Esq., BBO No.: 366730
The Wagner Law Group, PC
One Financial Center
25th Floor
Boston, MA 02111
(617) 537-5200

Dated: May 20, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, Esq., hereby certify that on the 20 day of May, 2005, I caused a copy of the foregoing to be served, via first-class mail, postage prepaid on the Plaintiff's Attorney, David Green, Esq., Alford & Bertrand, LLC, 60 Arsenal Street, P.O. Box 322, Watertown, MA 02471-0322.


Debra Dyleski-Najjar, Esq.